

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
JAVELL FOX,**

Plaintiff,

**9:20-cv-797
(GLS/ML)**

v.

C.O. ANDREJ L. GIFFORD,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Javell Fox
Pro Se
12-B-1626
Walkill Correctional Facility
Box G
Walkill, NY 12589

FOR THE DEFENDANT:

HON. LETITIA JAMES
New York State Attorney General
The Capitol
Albany, NY 12224

PETER A. McDANIEL
Assistant Attorney General

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following a Report-Recommendation (R&R) by Magistrate Judge Miroslav Lovric, duly filed February 16, 2023. (Dkt. No. 57.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the

parties herein.

No objections having been filed, and the court having reviewed the R&R for clear error, it is hereby

ORDERED that the Report-Recommendation (Dkt. No. 57) is
ADOPTED in its entirety; and it is further

ORDERED that defendant's motion for summary judgment (Dkt. No. 33) is **DENIED**; and it is further

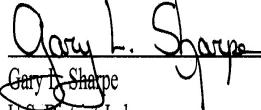
ORDERED that an exhaustion hearing pursuant to *Messa v. Goord*, 652 F.3d 305 (2d Cir. 2011) will be scheduled in due course to determine whether plaintiff properly exhausted his administrative remedies; and it is further

ORDERED that the matter is referred to Magistrate Judge Miroslav Lovric to conduct the aforementioned exhaustion hearing and prepare a report-recommendation; and it is further

ORDERED that the Clerk provide a copy of this Order to the parties in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

March 8, 2023
Albany, New York


Gary L. Sharpe
U.S. District Judge